IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 14246 of 1999(U)

PETITIONER:

DR. S. AYYAPPAN PILLAI, M/S. KAROTHUKUAHY HOSPITAL (P) LTD., ALUVA.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-I, ALUVA.

2. THE COMMISSIONER OF INCOME TAX, COCHIN.

BY ADV. SRI.GEORGE K.GEORGE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF STATEMENT SHOWING INCOME FOR ASSESSMENT YEAR 1994-95.

EXT.P2 DO. BREAK UP OF INTEREST FOR ASSESSMENT YEARS 1981-82 TO 1993-94.

EXT.P3 STATEMENT OF COMPUTATION OF ENTIRE INTEREST INCOME AND INCOME FOR THE RELEVANT ASSESSMENT YEARS.

EXT.P4 DEMAND NOTICE DT. 11-2-1997.

EXT.P5 REVISION DT. 26-5-1997.

EXT.P6 ORDER DT. 8-2-1999.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 14246 of 1999

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12th day of January, 2007.

J U D G M E N T

Petitioner is a surgeon by profession. Apart from his professional income, for the assessment year 1994-1995, he received substantial amounts towards enhancement of compensation for acquisition of his land. The amount he received included interest for 12 years. The petitioner included the entire amount in his return for the year 1994-95 and claimed the benefit of Section 89 of the Income-tax Act. However, since Section 89 of the Act applied exclusively to salary, the relief claimed under Section 89 was denied to him. In the above circumstances, the petitioner wanted to spread over the interest received by him to the years during which that interest accrued. This was also not permitted since, according to the Department, there is no provision for the same in the Act since the petitioner is following the cash accounting system and not the mercantile accounting system. The petitioner also relies on two decisions, namely, Rama Bai v. Commissioner of Income Tax, Andhra Pradesh, [1990] 181 ITR 400 and V. Bhaskara Pillai v. State of Kerala, [1996] 219 ITR 198. In those decisions, it has been specifically held that interest on enhanced compensation for land compulsorily acquired under the Land Acquisition Act, 1984 awarded by the court on a reference under Section 18 of the Act or on further appeal has to be taken to have accrued not on the date of the order of the court granting compensation, but as having accrued year after year from the date of delivery of possession of the land till the date of such order, and such interest cannot be assessed to income tax in one lump sum in the year in which the order is made.

2. Learned standing counsel for the Income-tax Department

points out that as explained in the decision of a Full Bench in Peter John v. Commissioner of Income-tax, [1986] 157 ITR 711, such a procedure can be adopted only in cases where the assessee is following the mercantile system of accounting and not the cash system of accounting. In the wake of these contentions, learned counsel for the petitioner confines his prayer for permission to file an application for waiver of interest under Sections 234A, 234B and 234C by virtue of the powers conferred on the Chief Commissioner of Income-tax under Section 119 of the Income-tax Act. Learned standing counsel submits that that right is available to the petitioner even without a direction from this Court . However, the petitioner submits that in the particular circumstances of the case, he is not likely to get any relief unless this Court directs the Chief Income-tax Commissioner to consider his application for the same. In the above circumstances, the original petition is disposed of with the following directions.

The petitioner shall file an application for waiver of interest under Sections 234A, 234B and 234C of the Act before the Chief Commissioner of Income-tax, Ernakulam within one month from today. On receipt of the same, the Chief Commissioner of Income-tax, Ernakulam shall consider the same and pass appropriate orders in accordance with law as expeditiously as possible at any rate, within two months from the date of receipt of a copy of the said application. Till final orders are passed on the application to be filed by the petitioner, recovery of interest demanded under Section 234A, 234B and 234A shall not be enforced.

Sd/- S. Siri Jagan, Judge.

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